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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Satellite Delivery of Network Signals to)	
Unserved Households for Purposes of)	CS Docket No. 98-201
the Satellite Home Viewer Act)	RM No. 9335
)	RM No. 9345
Part 73 Definition and Measurement of)	
Signals of Grade B Intensity)	

TO: The Commission

COMMENTS OF THE NATIONAL FOOTBALL LEAGUE

The National Football League ("NFL" or "League") submits these comments to emphasize the need to preserve localism by maintaining the integrity of the Commission's Grade B standard for purposes of the Satellite Home Viewer Act ("SHVA"). Because the League "distributes" different NFL game telecasts to different regions of the country, it relies on strong networks of geographically dispersed affiliates. The NFL therefore opposes any change to the Grade B intensity standard that would have the effect of undermining the network-affiliate relationship and the affiliates' exclusivity in their local markets. At the same time, the League supports the implementation of improved methods for predicting truly "unserved" households.

In broad terms, the NFL's interest is in maximizing the number of households within a market that have access to the programming of their local affiliates – whether that programming is transmitted over the air, via cable, or by satellite. The League therefore supports the "local-into-local" option identified by the Commission, assuming that it is eventually made

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available in all markets and that there are adequate safeguards to prevent abuse before "local-into-local" is universally available; it appears, however, that this matter needs to be addressed by Congress.

The NFL's Television Plan

The NFL is an unincorporated nonprofit association comprised of 30 active member clubs that own and operate professional football teams. All NFL games are televised, and the League owns copyright in all game telecasts during the regular season and post-season playoffs.

Over the years, the League has developed a television distribution plan designed to foster local team allegiance and to maximize viewership. Each Sunday afternoon in the fall, every NFL game is televised on the CBS or Fox networks — with different games broadcast in different television markets. Over the course of a Sunday afternoon, a viewer in any given market has access to two or three of the dozen or so NFL games broadcast across the country that day. All away games and sold out home games of the local team are shown in the home territory, and, in choosing which games not involving the local team to televise, efforts are made to identify those having the greatest local or regional interest. Thus, for instance, all Washington Redskins games are broadcast on conventional, over-the-air television in the Washington, D.C. area, while Denver Broncos games are widely televised by local network affiliates in the Rocky Mountain area. Local affiliates also produce and/or carry non-game programs (such as pre-game, post-game, highlight, and coaches' shows) of local clubs rather than of clubs located in distant markets.

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In addition, the League requires its television partners to abide by its blackout rule, *i.e.*, home games of NFL member clubs not sold out 72 hours in advance are not televised in that club's home territory.¹ The blackout rule promotes home game attendance, thereby enhancing the quality of both the stadium experience and television viewing, as stadiums packed with lively fans add to the entertainment value of the event. The blackout rule has been affirmed by Congress and the courts.²

The Importance of Localism

The League's television plan, including the blackout rule, is made possible by longstanding FCC rules and policies that promote localism and protect the exclusive programming rights of local broadcasters.³ In promulgating and reaffirming these rules and policies, the Commission has recognized that importation of distant signals into a broadcaster's

¹ The blackout rule is also incorporated into the League's supplementary satellite-delivered programming service, NFL Sunday Ticket™, which includes all Sunday afternoon game telecasts. If a home game is not televised locally, it is likewise unavailable to area NFL Sunday Ticket subscribers.

² See, e.g., 15 U.S.C. § 1292 (declaring that pooled television rights agreements may not contain any territorial restrictions "except within the home territory of a member club of the league on a day when such a club is playing a game at home"); Pub. L.No. 93-107, 87 Stat. 350 (1973) (adopting current blackout rule for 1973-75 seasons); *WTWV, Inc. v. National Football League*, 678 F.2d 142 (11th Cir. 1982) (affirming denial of injunction against blackout rule).

³ See, e.g., 47 C.F.R. § 76.92 (requiring cable systems to respect the contractual exclusivity rights negotiated by local affiliates with networks); 47 C.F.R. § 76.151 (requiring cable systems to respect the contractual exclusivity rights negotiated by local broadcasters with syndicated programming providers); 47 C.F.R. § 76.67 (empowering local holders of broadcast rights to prevent area cable systems from carrying live television broadcasts of local sport events if not available live over-the-air to area viewers); Report and Order, *Amendment of Parts 73 and 76 of the Commission's Rules Relating to Program Exclusivity in the Cable and Broadcast Industries*, 3 FCC Rcd. 5299 (1988) (discussing history and continued need for exclusivity protection for local broadcasters).

community would draw local viewers and, with the viewers, advertising dollars away from local stations – undermining the stations' ability to serve their communities of license.

Following the Commission's lead, Congress sought to preserve localism when it enacted the SHVA. Thus, Congress narrowly limited the compulsory license to "unserved households" – defined, *inter alia* as those that cannot, with a conventional rooftop antenna, receive a "signal of Grade B intensity." By prohibiting satellite carriers from importing distant network programming into the service areas of local affiliates (except in rare circumstances), Congress sought to protect the longstanding exclusivity arrangements between networks and their affiliates and the important public and private interests that such arrangements serve:

The network station compulsory copyright licenses created by the Satellite Home Viewer Act are limited because Congress recognized the importance that the network-affiliate relationship plays in delivering free, over-the-air broadcasts to American families, and because of the value of localism in broadcasting. Localism, a principle underlying the broadcast service since the Radio Act of 1927, serves the public interest by making available to local citizens information of interest to the local community (*e.g.*, local news, information on local weather, and information on community events). Congress was concerned that without copyright protection, the economic vitality of local stations, specifically those affiliated with national broadcast networks, might be jeopardized, thus undermining one important source of local information.

NPRM at ¶ 3 (footnotes omitted).

The NFL's Position

If Congress, on the Commission's recommendation, were to amend the definition of "Grade B intensity" in such a way as to expand the compulsory license afforded by the SHVA, the delicate balance struck by the SHVA would be upset – harming local stations, their locally oriented programmers, and the communities they serve.

The harm that an expansion of the SHVA's compulsory license would cause the NFL is illustrative. Most fundamentally, the availability of distant network programming to viewers within a local affiliate's service area would fractionalize the viewing audience for NFL games – thereby drawing viewers away from games designated for distribution by local affiliates in that market. Even more troubling to the League, because satellite carriers are prohibited under the SHVA from altering the signals they retransmit and because there is no provision for satellite carriers comparable to Section 76.67 (cable blackout), the blackout rule would be thwarted if a local game were retransmitted from a distant network station – thereby harming home game attendance. Finally, non-game programming such as coaches' shows provided by distant stations would compete with local programming – thereby disrupting the promotional efforts of local clubs.

On the other hand, localism would be preserved – indeed, enhanced – if the Commission simply refined the *method* used to predict "unserved" households. By using, for example, more sophisticated predictive models that take into account actual terrain, the Commission could (and should) more accurately identify the households within a local broadcaster's service area that are likely to be truly unserved and therefore eligible to receive network programming by satellite. At the same time, the Commission should reaffirm its current signal strength criteria so as to protect the integrity of the existing market areas of local stations.

In the end, the NFL favors any means of television distribution that preserves and promotes localism. The League supports the ability of all viewers, commercial and residential, to receive their local network television programming (as opposed to programming provided by

distant stations), whether they subscribe to satellite or to cable or to neither.⁴ Thus, the League supports the concept of "local-into-local" satellite service, which appears to have great potential for accomplishing this goal and for bringing needed competition in video programming delivery.⁵

Conclusion

In the NPRM, the Commission stated:

We acknowledge and reiterate Congress' decision in the SHVA to protect network-affiliate relationships and to foster localism in broadcasting. If we change the number of viewers predicted to receive a local station, we may substantially affect these policies. As we have noted, localism is central to our policies governing broadcasting and the obligation of broadcasters to serve the public interest.

NPRM at ¶ 36. The NFL submits that, if localism is to be preserved, the SHVA compulsory license cannot be expanded. Therefore, if any action is to be recommended, it should be limited

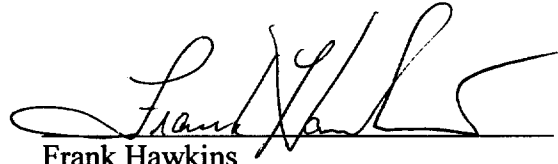
⁴ To the extent that there will continue, on a transitional basis, to be a compulsory license permitting the importation of distant network signals in certain circumstances, it should continue to be limited to "unserved households" and not extended to "unserved" commercial establishments. Once "local-into-local" is universally available, importation of distant signals by satellite should no longer be permitted.

⁵ Nevertheless, "local-into-local" service must be implemented carefully. For example, to the extent that satellite providers deliver local-into-local service in a particular market, they must be prohibited from importing distant network signals into that same market. Moreover, in markets where satellite providers are not yet able to deliver local-into-local service, their compulsory license should be limited to the provision of one signal of a particular network to truly unserved households; such a limitation would fully satisfy the legislative goal of providing equal – not superior – access to network signals to home viewers otherwise unable to receive any such signals.

to refinement of the procedures for predicting truly unserved households under the current legal standard.

Respectfully submitted,

NATIONAL FOOTBALL LEAGUE

A handwritten signature in black ink, appearing to read "Frank Hawkins", written over a horizontal line.

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